IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1401 of 1985

Date of Decision: 25-04-2005

BHAVESH KANTILAL DOSHI

Versus

KALUBHAI KHIMABHAI

(For Full Title See Page 2)

Coram:
The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting?

MR SAMIR B. BUNDELA
MR P.M. RAVAL, SR.ADVOCATE

For the Respondents:

MS ARCHANA ACHARYA
MR SB VAKIL, SR.ADVOCATE

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Appeal is directed against the judgment of Motor Accident Claims Tribunal (Main), Surendranagar, in Motor Accident Claim Petition No.159 of 1983 dated

20-02-1985.

Whether Reporters of Local Papers may be allowed to see the Judgment?

2. Shortly stated, on 01-12-1982 at about 4.30/5.00 p.m., Bhavesh Kantilal Doshi (claimant) was going towards the shop of his father from his house on cycle. He was driving the cycle at normal speed on the left side of the road. While he was proceeding towards Mehta Market, truck bearing Registration No.GRT 5388 coming from opposite direction driven rashly and negligently at excessive speed hit the claimant. The left leg of the claimant came under the front right wheel of the truck. As a result, claimant sustained serious injuries. He was moved to M.G.S.Hospital, Surendranagar for treatment, thereafter to C.J.Hospital, Surendranagar for further treatment. He was operated for left leg injury. Nail was inserted in the left leg. He remained indoor patient in the hospital for 12 days. His Left leg was plastered. Thereafter, he was taken to Bombay for further treatment and admitted as an indoor patient in the private clinic of Dr.J.S.Shah situated in Matunga and treated for long period. Plastic surgery was undertaken on the left leg in Bombay, thereafter he was brought back to Surendranagar on 13-02-1983. As the treatment was going on, on account of this accident, he could not pay proper attention to his studies. He suffered great pain and shock on account of injuries sustained in the accident and lost one academic year. Accordingly, he claimed compensation of Rs.1,25,000/-. Opponents have resisted the claim and filed written statements (Exh.19/22). They denied rashness and negligence on the part of the driver. They allege that claimant was proceeding towards Mehta Market on cycle in a rash and negligent manner, he did not know cycling properly, so the accident took place and the claim is stated to be exaggerated.

3. Accordingly, the Tribunal framed the issues, appreciated the evidence and came to the conclusion that accident took place as alleged and holding the issues in favour of the applicant awarded compensation of Rs.58,000/- carrying interest @ 6% from the date of application till payment. Claimant not satisfied with this award, filed this appeal for enhancement of compensation.

4. Learned counsel for the parties heard, record perused. The question for examination pertains to assessment of compensation. Learned counsel for the

claimant seeks enhancement of compensation pointing out the serious nature of injuries suffered by the claimant, the effect thereof on the claimant and the improper assessment of compensation by the Claims Tribunal, while learned counsel for the respondent submits that just compensation has been awarded, therefore, order impugned deserves to be maintained.

5. In this accident, claimant had suffered serious injuries. According to doctor following injuries were noticed:-

"1) Loss of soft tissues of whole left leg circumferentially involving subtuneous tissue, superficial veins and lymphatics with partial loss of muscle bellies of calf and anterior-lateiral compartment of leg (permanent)
2) Development of soft tissue swelling of distal leg and ankle after use of the limb in walking, standing or running for some time (permanent).
3) Movements measured by Geniometer:-
1) Left knee-flexion) to 100 degree i.e. 29 per cent loss of movement.
2) Ankle joint- 70 degree to 130 degree i.e. 25% loss of movement.
3) Less of 25% inversion movement at subtaloid joint.
4) Reduction in strength of left knee by 25% in extension and left ankle by 50% implantar flaxion.
5) X-ray revealed - mail has been removed fractures united soundly, changes of chronic estee my elities tibia uppereital.

He will have following abnormal physical disabilities on account of above mentioned abnormal clinical findings:

1) Gail - Limping of left lower limb (permanent)
2) difficulty in sitting crossed leg or squiatting (permanent)
3) difficulty in walking fast or running on level ground (permanent)
4) He will develop swelling of left ankle and foot after its sue is anti-gravity position (permanent)
5) Cosmetically he will have deformed contour of the leg (permanent)

Considering above mentioned clinical abnormal findings, he has 38-5% loss of physical functions

of left lower limb according to kessler, which in my opinion, was minimum residual disability considering original severity of the injury irrespective of quality of treatment."

6. Doctor fixed the loss of function of lower limb at 38.5% and 19.25% loss of physical functioning of the entire body. It seems to be more if we look at the nature of injuries suffered by the claimant. However, departing from the method adopted by the Claims Tribunal for assessment of compensation, it will be desirable to assess compensation taking into consideration the fact that claimant was studying in 10th Std. at the time of accident, therefore, after completion thereof, he could obtain job of a Clerk. During 1982, a Clerk could get Rs.800/-. Assessed on the principles laid down in two decisions of the Apex Court in Sarla Dixit v. Balvant Yadav (AIR 1996 SC 1274 and Ritaben v. Ahmedabad Municipal Transport Corporation (2000 ACJ 153) compensation can be assessed at Rs.800 x 35% (disability) = Rs.280 + Rs.560 (double the amount of Rs.280) = Rs.840 x 1/2 = Rs.420 x 12 = Rs.5040 x 15 = Rs.75,600/- + Rs.40,000/- (Rs.15,000/- for pain shock and suffering + Rs.15,000/- medical treatment + Rs.3,000/special diet + Rs.4,000/- transportation charges + Rs.3,000/- lodging and boarding charges). Accordingly, total compensation works out to Rs.1,15,600, which means enhancement by Rs.57,600/- (Rs.1,15,600 - Rs.58,000/-).

6. Accordingly, the Appeal is allowed. Compensation of Rs.1,15,600/- is awarded. Enhanced compensation of Rs.57,600/- will carry interest @ 6% from the date of application till payment/realisation. Award amount be deposited within two months, which shall be paid to the claimant on proper verification. Parties to bear their own costs.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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